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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re VALERIE M., a Person Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

JOSE M.,

Defendant and Appellant.

D054436

(Super. Ct. No. J516870)

APPEAL from an order of the Superior Court of San Diego County, Carol
Isackson, Judge. Affirmed.

Jose M. appeals an order terminating his reunification services at the 12-month review hearing regarding his daughter, Valerie M., while continuing services for Valerie's mother, M.M. He asserts the court abused its discretion by terminating his services. We affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

Valerie was removed from M.M.'s custody at the time of her birth in October 2007 because of M.M.'s drug use. The San Diego County Health and Human Services Agency (the Agency) petitioned on Valerie's behalf under Welfare and Institutions Code¹ section 300, subdivision (b), and the court ordered her detained. M.M. reported she had lost contact with Jose and did not want to be involved with him because he was jealous and had pushed her in front of her other children.

Jose's whereabouts were unknown at the time of the jurisdictional/dispositional hearing.² M.M. submitted to the allegations of the petition and the court found them true, ordered Valerie placed in foster care and ordered reunification services for M.M. The Agency reported it was continuing to search for Jose.

Jose made his first court appearance at the six-month review hearing on June 16, 2008. He was appointed counsel and executed a voluntary declaration of paternity. Jose said he had seen M.M. using drugs, and when she was about four months pregnant they argued and slapped each other. He said he was angry that she had been using drugs, and he once grabbed and pushed her in front of her other children to prevent her from leaving to use drugs with another man. He said he wanted to participate in reunification services.

¹ Statutory references are to the Welfare and Institutions Code.

² Jose later reported to the social worker that a few days after Valerie's birth M.M. called to ask him to pick up Valerie because Child Welfare Services (CWS) had taken her. However, when he learned M.M. had not put his name on the birth certificate, he decided not to do so.

The social worker provided him with a services plan that included participation in parenting education, domestic violence treatment, substance abuse testing and visitation.

On the day scheduled for the 12-month hearing, the court found Jose was the presumed father and set dates for a pretrial status conference and a contested 12-month hearing. Jose did not attend the pretrial status conference. M.M. said she had only an old telephone number for him and provided what she thought was his address. She said Jose's roommate told her Jose had gone to Mexico because his mother was sick, but she did not know how long he would be there.

Jose was not present at the 12-month hearing on January 6, 2009. The Agency made an offer of proof that if the social worker were to testify, she would say Jose last visited Valerie during the first week of November 2008. The social worker did not know Jose's whereabouts. The court found the Agency had provided reasonable services. It terminated Jose's reunification services, finding he had not made substantive progress and his whereabouts were unknown. It continued M.M.'s services, granted her unsupervised visits and set an 18-month hearing.

DISCUSSION

Jose contends the juvenile court abused its discretion by terminating his reunification services at the 12-month hearing. He argues an abuse of discretion is shown because his conduct was not the cause of Valerie's removal, he had a limited opportunity to participate in services because his first appearance was at the six-month review hearing, and then he had to leave San Diego because his mother became ill and he had to

go to see her in Mexico. He asserts his services should be continued along with M.M.'s because the law favors reunification whenever possible.

The trial court's exercise of discretion is not disturbed in the absence of an arbitrary, capricious or patently absurd determination. (*In re Raymundo B.* (1988) 203 Cal.App.3d 1447, 1456.) In *In re Alanna A.* (2005) 135 Cal.App.4th 555, 558-559, this court ruled a court has discretion at the 12-month hearing to terminate one parent's services while continuing them for the other parent. In *In re Jesse W.* (2007) 157 Cal.App.4th 49, 57-65, this court held that when read together, section 361.5, subdivision (a)(2), which governs the provision of reunification services as to a child who is less than three years old at the time of removal from a parent, and section 366.21, subdivision (e), which governs six-month review hearings, do not preclude terminating services at the six-month hearing for one parent regardless of whether the court sets a section 366.26 hearing or offers further services to the other parent. "[A]s the Legislature has recognized, it may be fruitless to provide reunification services under certain circumstances." (*In re Rebecca H.* (1991) 227 Cal.App.3d 825, 837.)

Jose has not shown the court abused its discretion by terminating his services at the 12-month hearing. Section 366.21, subdivision (g)(1)(A)-(C) states a court may extend services to the 18-month date if it finds the parent has regularly and consistently visited the child, made significant progress in addressing the problems that led to the child's removal and demonstrated the capacity and ability to complete the treatment plan and provide for the child. Jose did none of these things. He did not enroll in parenting education or domestic violence treatment as required by his case plan. He attended some

visits, but missed visits he could have had with Valerie. He did not maintain communication with the Agency and did not inform the Agency or his attorney of his whereabouts. At the time of the hearing, his whereabouts were unknown.

The fact that Jose waited to appear for the first time until the six-month review hearing does not mean he is entitled to an additional six months of services. The standard of review of findings at a review hearing does not depend on when the parent begins services, but the time for which services can be ordered. (*Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 846.) Also, it is not controlling that Valerie was removed from parental custody because of M.M.'s conduct rather than Jose's conduct.

As this court stated in *In re Alanna A.*, *supra*, 135 Cal.App.4th at p. 566,

"[T]he termination of reunification services to one parent is rationally related to the legitimate government interest in focusing government resources on the parent who has consistently visited the child, made significant progress in resolving problems, and demonstrated the capacity and ability both to complete the treatment plan and provide for the child's needs."

The court found there was a substantial probability Valerie could be returned to M.M.'s custody by the time of the next hearing. It then reasonably continued services for her. Jose, however, had made no attempt to participate in the services available to him. It was thus appropriate for the court to terminate his services. Jose has not shown an abuse of the court's discretion.

DISPOSITION

The order is affirmed.

BENKE, Acting P. J.

WE CONCUR:

HUFFMAN, J.

AARON, J.